Office-Supreme Court, U.S.
FILED
NOV 7 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962.

No. 256.

IN RE ESTATE OF ANNIE E. HURST, DECEASED.

On Petition for Writ of Certiorari by Harry J. Alker, Jr.

PETITION FOR REHEARING.

ROBERT M. TAYLOR,
2215 Land Title Building,
Philadelphia, Pennsylvania,
Attorney for Petitioner.

International, 711 So. 50thSt., Phila. 43, Pa.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

IN RE ESTATE OF ANNIE HURST, DECEASED.

ON PETITION FOR WRIT OF CERTIORARI BY
HARRY J. ALKER, JR.

PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry J. Alker, Jr., prays that this Court rehear and reconsider its denial of the petitioner's petition for the issuance of a writ of Certiorari to the Supreme Court of Pennsylvania in the above entitled estate matter.

Your petitioner filed his Reply Brief with your Honorable Court on Friday, October 12, 1962, some time between three and four o'clock in the afternoon.

On Monday, October 15, 1962, in the late afternoon, a telegram was received by petitioner's counsel advising that the petition had been denied.

GROUNDS FOR GRANTING THE PETITION.

Your petitioner feels that a serious error has been made by your Court in refusing the Petition for Certiorari, and submits (1) that the Supreme Court of Pennsylvania has not apparently based its decision solely on the record, but was influenced by matters outside the record or immaterial and irrelevant to it; (2) that most of the contestants' witnesses were prejudiced against Alker; (3) that the funds would have escheated to the State; (4) that petitioner's constitutional rights and testatrix's constitutional rights were violated; and (5) that the Courts have not weighed seriously enough the testimony of Doctor Crew that, regardless of what testatrix's physical condition may have alleged to have been, or may have been, he could not see anything wrong with her mentality on the two days in early December, 1949 (before her will was executed) when he examined her; and that an examination of the record reveals no material evidence of a weakened intellect on the part of Mrs. Hurst at the time she executed her will.

Further, that a study of the record will disclose that there was no evidence amounting to a scintilla that Alker exercised any undue influence on Mrs. Hurst. There was no proof of any threats, misrepresentations, inordinate flattery or any physical or mental coercion employed by Alker to destroy the free agency of the testatrix. That the brunt of the contestants' argument against the will amounts to no more than that it is unnatural and suspicious. Whether a will is unnatural in a moral or ethical sense which cuts off only some possible charity and favors others is a question of casuistry with which the law is not concerned. It is submitted that a will is unnatural in a legal sense only when it is contrary to what the testatrix under the admitted circumstances and with her known sentiments would have made; and it is only on that ground that the questions should be admissible at all; to wit: that it tends to show

that what testatrix did was not from her own natural impulse but from coercion.

The mere fact that it would have been wiser to do a thing one way rather than another does not make the same illegal nor does it justify the depriving one of his or her property or depriving Mrs. Hurst of the right to make a will as she wished. Otherwise it would be a constitutional violation.

Mrs. Hurst came to Alker to draw her will, not to some one else.

There is not one bit of evidence of any undue influence in the record.

This petition for rehearing is filed not only because of the above mentioned reasons, but also due to the fact that petitioner's Reply Brief was filed with your Honorable Court on Friday, October 12, 1962, between 3.00 and 4.00 o'clock P. M., and on Monday, October 15, 1962, in the late afternoon, your petitioner's counsel received a telegram from the Clerk of the Court, sent from Washington, D. C., stating that the Petition for Certiorari had been denied.

Your petitioner feels, therefore, that your Honorable Court did not have sufficient time in which to consider the matters set forth in petitioner's Reply Brief, which were material, or that your Honorable Court inadvertently did not see the Reply Brief at all due to the time element involved.

For the above reasons and the reasons set forth in the Petition for Certiorari, and the petitioner's reply brief, it is respectfully urged that a rehearing be granted and that upon such rehearing a writ of Certiorari issue to the Supreme Court of Pennsylvania.

HARRY J. ALKER, JR.,
Petitioner.

ROBERT M. TAYLOR,
Attorney for Petitioner.

I hereby certify that this petition is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of the Rules of this Court.

ROBERT M. TAYLOR,
Attorney for Petitioner.

MOTION FILED DEC 28 1962

IN THE

Supreme Court of the United States

October Term, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

Harry J. Alker, Jr., Petitioner.

PETITION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING AND SECOND PETITION FOR REHEARING.

JAMES J. REGAN, JR.,
1505 Land Title Building,
Philadelphia 10, Pa.,
Attorney for the Petitioner.

International, 711 So. 50th St., Phila. 43, Pa.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

PETITION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING.

Your petitioner, Harry J. Alker, Jr., prays leave to file a second petition for rehearing and a reconsideration of petitioner's petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Pennsylvania in the above entitled case.

The petition for issuance of a writ of certiorari was filed on July 16, 1962. A brief was filed by respondents. A reply brief was filed by petitioner late on Friday, October 12, 1962. Certiorari was refused on Monday, October 15, 1962.

A petition for rehearing was filed on November 5, 1962, which was denied by this Honorable Court on December 3, 1962.

The matter here is one involving equity and justice and the constitutional questions of due process and equal protection under the law. Your petitioner firmly believes there has been a gross misapplication of due process and a deprivation of his property in violation of the 14th Amendment in this present case by the Trial and Appellate Courts sitting therein, and further believes and feels that a grave inequity has been done to him.

The decisions of both Pennsylvania State Courts (Orphans' and Supreme) are irreconcilably inconsistent because they held the testatrix to be fully competent as to her sound, disposing mind, memory and understanding, thereby validating her will as to all legatees except your petitioner, Alker, and concomitantly therewith voided petitioner's legacy upon inadmissible and irrelevant evidence of his disbarment for tax evasion, speciously termed therein "undue influence".

It should be clear beyond cavil that a person of sound, disposing testamentary capacity cannot, at the same time, be "unduly influenced" by anybody, and that the Pennsylvania Courts' illogical holding to the contrary could have been found on nothing more than the prejudice engendered by petitioner's disbarment for evasion of Federal income taxes (wholly unrelated and irrelevant matters). The combination of these two highly prejudicial considerations by the Pennsylvania Courts below could do naught but result in a patent failure of "Due Process" by a deprivation of petitioner's property in violation of the 14th Amendment U. S. Constitution, and a denial to your petitioner of the equal protection of the laws.

Your petitioner, therefore, has prepared a second petition for rehearing of his petition for certiorari and begs leave of the Court to file the same.

Counsel hereby certifies that this petition is not filed for purposes of delay, but in good faith for the reasons herein specified.

Respectfully submitted,

James J. Regan, Jr.,
1505 Land Title Building,
Phila. 10, Pa.,
Attorney for the Petitioner.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

ORDER.

AND NOW, , 1963, leave is granted the petitioner to file a second petition for rehearing of the petitioner's petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Pennsylvania in the above entitled case.

By THE COURT,

J.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

SECOND PETITION FOR REHEARING.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry J. Alker, Jr., again prays that this Court rehear and reconsider its denial of his petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Pennsylvania in the above matter.

Your petitioner filed a petition for issuance of a writ of certiorari on July 16, 1962. It was refused on October 15, 1962.

A petition for rehearing was filed on November 5, 1962, which was denied by this Honorable Court on December 3, 1962.

The matter here is one involving equity and justice and the constitutional questions of due process and equal protection under the law. Your petitioner firmly believes there has been a gross misapplication in this present case by the

Trial and Appellate Courts sitting herein and further believes and feels that a grave inequity has been done to him.

The refusal of the certiorari in this case leaves the petitioner devoid of property that should rightfully come to him under the will of Annie E. Hurst, Deceased, and for this reason he submits the matter should only be disposed of after oral argument before this Honorable Court. The evidence in the record of this case clearly shows the will of Annie E. Hurst, Deceased, was only made by her after careful investigation by her of her assets and what she had to dispose of; that she had gone over the same not only with the petitioner but also with a public accountant, Horace S. Rhoads, as to what she owned and what she would probably have to live upon.

The Trial Court and State Appellate Court put great emphasis upon the testimony of the contestants' witnesses (neighbors of the decedent) as to decedent's bodily infirmities and her weakened mentality.

Petitioner in his argument contained in his petition for certiorari called this Court's attention (page 24) to the testimony of these same witnesses that Mrs. Hurst was always out sweeping the pavement, taking long walks and working in the garden. Petitioner in turn called to this Court's attention (page 14) that a perusal of these witnesses' testimony indicated that they were witnesses prejudiced against Harry J. Alker, Jr., firstly, by personal animosity and, secondly, by that strange, swarthy, young man by the name of Joseph Panosetti, who was an investigator for the State of Pennsylvania, Department of Escheat, and who visited these witnesses and apparently turned them against petitioner with the purpose of having the estate or part of it escheat.

Petitioner believes that this Court may not have given serious consideration of this point as to Joseph Panosetti's action in this estate matter, with the thought in mind that as a State officer he would properly carry out his duties as an investigator.

The Court's attention is therefore called to the following news item published in the Philadelphia "Evening Bulletin" on Tuesday, December 18, 1962:

"Man Pleads Guilty in Plot To Get $69,000 Estate.

"Carmen A. Quattrocci, 51, pleaded guilty in Quarter Sessions Court yesterday to conspiring in a fraudulent scheme to obtain the $69,000 estate of a man who died Sept. 11, 1961.

Deputy State Attorney General Philip P. Kalodner said Quattrocci, of Paul St. near Torresdale Ave., will be Commonwealth witness against other defendants in the conspiracy.

Judge Theodore L. Reimel deferred sentence until the other three men are tried.

No Will Left

Kalodner was the only witness. He outlined the case involving the estate of Belman Lui, 72, a retired Chinese laundryman who was found dead in his room at 1830 N. Front St.

Kalodner said Lui left no will although a search of his room turned up the $69,000 worth of securities.

The case was investigated by Joseph A. Panosetti, an administrative officer in the Escheat Division of the State Department of Revenue, and Edward Dougherty, Jr. an investigator in the division.

Fake Will 'Found'

Kalodner said Dougherty claimed to have found a will in a subsequent search of the room. In the will, Lui left his estate to a George Lee, of 3600 Spring Garden St.

Kalodner said Lee was a fictitious person and that Quattrocci passed himself off as Lee in an attempt to obtain the estate.

Panosetti, of Paul St., near Torresdale Ave. and Dougherty, of E. Allen's lane near Ardleigh Ave., were arrested on charges of forging the will and setting up the false heir.

Arrested later was Gerald Levinson, a securities salesman of Park lane near Wissahickon av. He is accused of selling stock from the estate of Belman Lui."

A perusal of this item will disclose to this Court that the same Joseph A. Panosetti has been arrested for forging a will and setting up false heirs therein. This certainly bears out petitioner's contentions as to this man's character and his influencing the contestant's witnesses to testify against him in a prejudicial manner which certainly caused an unfair trial in the Trial Court.

The question is a very serious one, being the right of a person found by the Court below to be mentally competent to make a will (and the question was not raised before your Honorable Court) and dispose thereby of her property as she desired by will and the right of the beneficiaries to receive the same thereunder. The question of whether she had the right to so dispose of the property by will and the right of the beneficiaries to receive the same thereunder, are serious questions, as to decide otherwise than that she had such a right would deprive the parties of their constitutional rights.

The Court below found she had testamentary capacity, while the opposition did not press the question; and the sole question before the Court is whether the petitioner here exercised any undue influence over her.

There is not one bit of evidence in the case that petitioner did exercise any undue influence.

The testimony shows that the son of Annie E. Hurst had died shortly before that; that a trust fund was set up for her in his will; that she was given the right to dispose